Supreme Court of the United States.

No. 243.—October Term, 1903.

Lydia Bradley, Plaintiff in Error, vs. H. W. Lightcap. } In error to the Supreme Court of the State of Illinois.

[May 31, 1904.]

Five ejectment suits were brought by Lightcap against tenants of Mrs. Bradley, July 13, 1895, in the Circuit Court of Mason County, Illinois, and taken on change of venue to Fulton County, where they were consolidated. Mrs. Bradley was let in to defend, and the case went to judgment in her favor. This judgment was reversed by the Supreme Court of Illinois, after several hearings, and the case remanded to the Circuit Court. 186 Ill. 510. On the retrial judgment was recovered by Lightcap, which was affirmed by the Supreme Court, 201 Ill. 511, and this writ of error prosecuted.

On the disposition of the case when brought to the Supreme Court the second time the division of opinion among the seven members of the court found expression. Mr. Chief Justice Magruder, Mr. Justice Carter and Mr. Justice Ricks concurred in the opinion of Mr. Justice Cartwright in affirmance of the judgment. Mr. Justice Wilkin and Mr. Justice Boggs filed dissents, and Mr. Justice Hand, while agreeing that the legal title was in Lightcap, was of opinion that the full beneficial interest was in Mrs. Bradley, and that she, being in possession, a court of chancery might protect her equitable interest and possession by enjoining the prosecution of the ejectment suit.

The facts are in substance these:

Tobias S. Bradley loaned T. B. Breedlove, June 3, 1867, $19,616, evidenced by notes payable in one, two, three, four and five years, respectively, and secured by a trust deed on 1,200 acres of land in Mason County, Illinois. On Bradley's death, Lydia, his widow, became the sole owner of the trust deed and notes. October 8, 1867, Breedlove conveyed the 1,200 acres to Prettyman, subject to the mortgage to Bradley. August 13, 1868, Prettyman conveyed 680 acres to McCune, and McCune gave a trust deed thereon to E. G. Johnson, trustee, to secure the payment of $15,000, evidenced by three notes, to the order of Lydia Bradley, and due in one, two and three years after date. Mrs. Bradley, through her agent, accepted these notes and trust deed as part payment of the Breedlove notes and Prettyman paid the difference, and the 1,200 acres were released from the Breedlove trust deed or mortgage.

November 13, 1868, McCune conveyed the 680 acres to Prettyman, subject to the trust deed to Johnson. No taxes were paid by McCune or by Prettyman, and no part of the mortgage debt was ever paid.

May 24, 1871, Mrs. Bradley redeemed from the tax sales for taxes of 1868 and 1869, and in 1872 for the taxes of 1871, and she has paid all other taxes assessed on the land since the trust deed or mortgage was given.

Early in the summer of 1871, Austin Johnson, whom Mrs. Bradley, in July, 1870, had appointed her business agent, went on the land on her behalf, and in 1872, Mrs. Bradley and Austin Johnson together went upon the land and she took personal and exclusive possession of it, which by herself and her tenants she has retained ever since.

February 22, 1872, Mrs. Bradley filed a bill in the Circuit Court of Mason County to set aside the release of the Breedlove trust deed or mortgage, on the ground of fraud, and for the foreclosure of that mortgage on the 1,200 acres for the payment of the balance of the original debt. McCune was a party but seems to have left the State and was brought in by publication. The bill was contested, and on August 22, 1879, the Mason Circuit Court entered a decree of foreclosure and sale on the McCune trust deed, finding the amount due Mrs. Bradley to be $31,500. The 680 acres were sold by the master in chancery, October 27, 1879, bid in for Mrs. Bradley for $10,000, and a certificate was issued to her.

Mrs. Bradley proceeded to develop and improve the 680 acres, drained the tract, erected farm buildings, laid tiles, reduced the land to cultivation, and has maintained exclusive possession to this date.

September 4, 1893, Prettyman gave a quitclaim deed of the land to Lightcap, which was recorded November 30, 1894. July 13, 1895, these actions in ejectment were commenced.

The McCune trust deed or mortgage was executed August 13, 1868, and at that time chapter 57 of the Revised Statutes of Illinois contained these sections:

"SEC. 12. Whenever any lands or tenements shall be sold by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing the deed for the premises sold, to give to the purchaser or purchasers of such lands or tenements a certificate in writing describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in this chapter, and such sheriff or other officer shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate, signed by him; and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

"SEC. 13. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold, by virtue of any execution within twelve months from such sale, to redeem such lands

or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted shall be null and void."

"SEC. 22. If such lands or tenements so sold, shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer, who sold the same, or his successor in office, or his executors or administrators, to complete such sale, by executing a deed to the purchaser; . . ."

"SEC. 24. In all cases hereafter, where lands shall be sold under and by virtue of any decree of a court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors, administrators or grantors to redeem the same in the manner prescribed in this chapter, for the redemption of lands sold by virtue of executions issued upon judgments at common law, and judgment creditors may redeem lands sold under any such decree in the same manner as is prescribed for the redemption of lands, in like manner sold upon executions issued upon judgments at common law."

The statutes contained no limitation of time within which a sheriff's or master's deed must be taken after the period for redemption had expired, and prescribed no penalty or loss of right to the purchaser by reason of delay or failure in taking out such deed.

In *Rucker* v. *Dooley*, 49 Ill. 377, the Supreme Court of Illinois, at its September term, 1868, reasoning by analogy, held in an equity suit, as against a purchaser of real estate at an execution sale, who was never in its possession, and had no claim to it, except under his judgment and sale, and who had taken out a sheriff's deed twenty-nine years after the sale, and in favor of a *bona fide* purchaser, in possession, claiming by mesne conveyances from the judgment debtor, that for the protection of purchasers for a valuable consideration, without notice, from the judgment debtor, and those claiming under him, a sheriff's deed ought not to be issued after the lapse of twenty years, and that application for a deed made after the lapse of seven years, during which the judgment was a lien, and fifteen months, the time given for redemption, and within twenty years, should be made to the proper court by rule on the sheriff and notice to the parties interested.

March 22, 1872, an act of the general assembly of Illinois was approved, entitled "An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree," which went into force July

1, 1872, the provisions of which were not materially different from those above quoted, but section 30 was as follows, the additions to former acts being indicated by italics:

"§ 30. When the premises mentioned in any such certificate shall not be redeemed in pursuance of law, the legal holder of such certificate shall be entitled to a deed therefor *at any time within five years from the expiration of the time of redemption.* The deed shall be executed by the sheriff, master in chancery or other officer who made such sale, or by his successor in office, or by some person specially appointed by the court for the purpose. *If the time of redemption shall have elapsed before the taking effect of this act, a deed may be given within two years from the time this act shall take effect. When such deed is not taken within the time limited by this act the certificate of purchase shall be null and void; but if such deed is wrongfully withheld by the officer whose duty it is to execute the same, or if the execution of such deed is restrained by injunction or order of a court or judge, the time during which the deed is so withheld or the execution thereof restrained shall not be taken as any part of the five years within which said holder shall take a deed.*"

Mr. Chief Justice FULLER delivered the opinion of the Court:

Among the defences, it is stated Mrs. Bradley relied on, were that "under section 6 of chapter 83 of the Revised Statutes, in regard to limitations, the trust deed from McCune to Johnson, the decree of sale and certificate of purchase constituted color of title which, coupled with her possession and payment of taxes for seven successive years, made her the legal owner of the lands to the extent and according to the purport of her paper title;" that "under section 4 of the same act her possession and actual residence, through her tenants, for seven successive years, having a connected title in law or equity deducible of record from the United States, by virtue of the same trust deed, decree and sale, barred the action of plaintiff;" and "that she was mortgagee in possession after condition broken and entitled to possession as such." The Supreme Court of Illinois overruled all these defences, and held that when the sale was made under the decree and the mortgagee purchased at the sale, the mortgage was satisfied as to the land, and all rights of the mortgagee were represented by the certificate of purchase, and that, by force of the act of 1872, the mortgagee having failed to take the deed within the time limited by the statute, the certificate became null and void, her title terminated as it would on redemption, and she ceased to have any interest whatever in the premises, so that the mortgagor or his grantees, without any payment of the mortgage debt, was entitled to recover the possession from the mortgagee, in ejectment, on the strength of a perfect title.

Before and when the trust deed to Johnson, which may be treated as if a mortgage to Mrs. Bradley, was given, the legal title passed to the mortgagee according to the law of Illinois in respect of mortgages.

After condition broken the mortgagee became entitled to possession of the mortgaged premises and could maintain an action of ejectment. The mortgagor had only an equity of redemption, and in case of sale on foreclosure had by statute the right to redeem within twelve months by making full payment.

The law in general as it is to-day was thus declared in *Ware* v. *Schintz*, 190 Ill. 189, 193:

"Under the repeated rulings of this court a mortgagee, as against the mortgagor, is held, as in England, in law, to be the owner of the fee, having the *jus in re* as well as *ad rem*, and entitled to all the rights and remedies which the law gives to such owner, and may, after condition broken, maintain ejectment against the mortgagor. The mortgagor or his assignee, however, is the legal owner of the mortgaged estate as against all persons excepting the mortgagee or his assigns. *Delahay* v. *Clement*, 3 Scam. 201; *Vansant* v. *Allmon*, 23 Ill. 30; *Carroll* v. *Ballance*, 26 Id. 9; *Oldham* v. *Pfleger*, 84 Id. 102; *Fountain* v. *Bookstaver*, 141 Id. 461; *Esker* v. *Heffernan*, 159 Id. 38. The fee title held by the mortgagee is in the nature of a base or determinable fee. The term of its existence is measured by that of the mortgage debt. When the latter is paid or becomes barred by the statute of limitations the mortgagee's title is extinguished by operation of law. *Pollock* v. *Maison*, 41 Ill. 516; *Harris* v. *Mills*, 28 Id. 44; *Gibson* v. *Rees*, 50 Id. 383; *Barrett* v. *Hinckley*, 124 Id. 32; *Lightcap* v. *Bradley*, 186 Id. 510. Until it is extinguished the legal title is in the mortgagee for the purpose of obtaining satisfaction of his debt."

The condition of the McCune mortgage was broken as soon as made by failure to pay taxes previously and then due, and again by failure to pay the notes maturing in 1869, 1870 and 1871, and Mrs. Bradley entered into peaceable possession of the tract of six hundred and eighty acres before the act of 1872 took effect. If the assent of the mortgagor was necessary, which we do not hold it was, it should be implied in the circumstances. Her possession was that of mortgagee in possession, and she could defend as against the owner of the equity of redemption any action except for an accounting of the rents and profits, and to redeem. And as she could pursue concurrent remedies the character of her possession was not affected by the filing and pendency of the bill to set aside the release of the Breedlove mortgage. But that bill went to decree in 1879 of foreclosure of the McCune mortgage by sale, and sale was had. There was no independent purchaser, nor was the whole amount of the mortgage debt bid, but Mrs. Bradley, the mortgagee in possession, bid about one-third of the amount due. By the statute the right of redemption of McCune and his grantee was barred and determined October 27, 1880, at the expiration of twelve months from the date of sale, and so it was by the express provision of the decree of foreclosure.

The certificate of purchase was issued to Mrs. Bradley, but it does not appear that she obtained a deed. It is assumed, and we assume, that she

did not, although it is suggested that after the lapse of so many years, and under the circumstances, in an action at law by the original mortgagor against the mortgagee in possession, an irrebutable presumption of a deed arises on grounds of public policy.

The Supreme Court of Illinois in the present case decides that the act of 1872 applies to mortgagees in possession, and that it operates not simply as a statute of limitations on the right to obtain a deed, but in effect as a statute forfeiting, by the nullification of the certificate, the mortgagee's estate and right of possession by reason of *laches*, and means that if a deed be not taken out within the time specified, the mortgagee has lost his debt and the mortgagor has been reinstated in his former title by operation of law, and without having paid anything in redemption. Accepting the construction of the act by the State court, and its conclusion that it applies to Mrs. Bradley, then the question is whether such a statute so applied does not impair the obligation of the contract previously existing between the mortgagee and the mortgagor, or deprive the mortgagee of property rights without due process. That question was raised in the Supreme Court of Illinois, and the court held that it did not. 201 Ill. 511.

Confessedly subsequent laws, which in their operation amount to the denial of rights accruing by a prior contract, are obnoxious to constitutional objection.

In *Bronson* v. *Kinzie*, 1 How. 311, the statute objected to gave the mortgagor twelve months to redeem after the sale, and Mr. Chief Justice Taney said:

"It declares that, although the mortgaged premises should be sold under the decree of the Court of Chancery, yet that the equitable estate of the mortgagor shall not be extinguished, but shall continue for twelve months after sale; and it moreover gives a new and like estate, which before had no existence, to the judgment creditor to continue for fifteen months. If such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop. . . . Any such modification of a contract by subsequent legislation, against the consent of one of the parties, unquestionably impairs its obligations; and is prohibited by the Constitution."

In *Barnitz* v. *Beverly*, 163 U. S. 118, it was held that a State statute which authorized redemption of property sold in foreclosure of a mortgage where no such right previously existed, or extended the period of redemption beyond the time previously allowed, could not apply to a sale under a mortgage executed before its passage, and Mr. Justice Shiras, referring to *Brine* v. *Insurance Company*, 96 U. S. 627, 637, said:

"But this court held, through Mr. Justice Miller, that all the laws of a State existing at the time a mortgage or any other contract is made, which affect the rights of the parties to the contract, enter into and become a part of it, and are obligatory on all courts which assume to give a remedy on such contracts, . . . that it is therefore said that these laws enter into

and become a part of the contract"—and that "'the remedy subsisting in a State when and where a contract is made and is to be performed is a part of the obligation.'" . . .

"What we are now considering is, whether the change of remedy was detrimental to such a degree as to amount to an impairment of the plaintiff's right; and, as this record discloses that the sale left a portion of the plaintiff's judgment unpaid, it may be fairly argued that this provision of the act [which provided that the land 'shall not again be liable for sale for any balance'] does deprive the plaintiff of a right inherent in her contract.

"When we are asked to put this case within the rule of those cases in which we have held that it is competent for the States to change the form of a remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired, we are bound to consider the entire scheme of the new statute, and to have regard to the probable effect on the rights of the parties."

In *Hooker* v. *Burr*, 194 U. S. , these and many other cases were considered, and the distinction was pointed out between a purchase by the mortgagee and by an independent purchaser, having no connection whatever with the original contract between the mortgagor and mortgagee, and whose contract was made under the law as then existing; as well as the distinction where the mortgagee bids the whole amount of the mortgage debt, as in *Connecticut Life Insurance Company* v. *Cushman*, 108 U. S. 51, which was cited with approval. There the company bid enough to pay the full amount of the mortgage debt, principal and interest, and on redemption contended that it was entitled to interest at the rate existing at the time of the execution of the mortgage, which had been reduced before the sale, though subsequent to the mortgage. *Barnitz* v. *Beverly*, was distinguished. In that case the sum bid at the foreclosure sale did not equal the amount due on the mortgage, the debt of the mortgagor was not thereby paid, and it was the mortgagee's rights under her contract as contained in the mortgage, and not her rights as a purchaser, that were in controversy. In the Cushman case, on the contrary, the amount bid at the foreclosure sale paid the mortgage debt, and the subsequent position of the mortgagee was as a purchaser only.

And we said: "If the mortgage had been foreclosed and the mortgagee had thereby realized his debt, principal and interest in full, upon the sale, there can be no doubt that he would not have been heard to assert the invalidity of the subsequent legislation, nor would an independent purchaser at the sale have been heard to make the same complaint. Of course, this does not include the case of a mortgagee who purchases at the foreclosure sale and bids a price sufficient to pay his mortgage debt in full with interest, and an action thereafter commenced against him to set aside the sale because it was made in violation of legislation subsequent to the mortgage. In such case we suppose there can be no doubt of the right of the mort-

gagee to assert, as a defence to the action, the unconstitutionality of the subsequent legislation as an impairment of his contract contained in the mortgage."

In Illinois the legal title vests in the mortgagee, but in equity that title is regarded as a trust estate to secure the payment of the money, and where the mortgaged premises are bid off by the mortgagee, at foreclosure sale, for the full amount of the decree, interest and costs, the mortgage may be held to have expended its force, but where the bid is for less than the full amount, a different rule would be applicable. *Bogardus* v. *Moses*, 181 Ill. 554, 559, 560.

Entitled to pursue different remedies to collect the mortgage debt or to free the mortgaged premises of the right of redemption, foreclosure and sale, purchase and deed are in aid of the original title and not inconsistent with it. *Williams* v. *Brunton*, 3 Gilm. (Ill.) 600. If the right of redemption is determined by efflux of time, which must be before a deed can issue, failure to take out the deed either has no effect so far as the mortgagor is concerned because he is not injured, or the right of redemption still remains and all the mortgagor can claim is that the relation between the parties is unchanged.

In the present case there was no independent purchaser; the bid of the mortgagee was less than one-third of the amount found due; there was no redemption and the right of redemption was cut off; the mortgagee was in possession before and at the time of foreclosure and sale, and when ejectment was brought sixteen years thereafter, and the mortgage debt had never in fact been paid; so that the original mortgagor as plaintiff in ejectment could not recover unless by the subsequent law the mortgagee had been subjected to the loss of all her rights, as against him, by *laches* in obtaining a deed, although as a general rule *laches* are not imputable to a party in possession to the loss of the right thereto.

And if the operation of the subsequent law is to impair the obligation of Mrs. Bradley's mortgage contract or to deprive her of rights protected by the Constitution, we cannot decline jurisdiction because of a construction that we deem untenable, *Louisville Gas Company* v. *Citizens' Gas Light Company*, 115 U. S. 683, 697; *Terre Haute & Indianapolis Railroad Company* v. *Indiana*, 194 U. S.

By the judgment in this case Lightcap has been held clothed with the legal title and the immediate right of possession. And this on the ground that the certificate of purchase discharged the McCune mortgage and that the act of 1872 nullified the certificate after the lapse of five years. This gave to the limitation of time for taking out the deed the effect of destroying the right of possession taken under the mortgage, wiping out the mortgage with the certificate, and allowing the mortgagor to assert the legal title and right of possession as against the mortgagee as a wrong-

doer. That is to say, though Mrs. Bradley was rightfully in possession and though the mortgage debt had not in fact been paid, the bar of the statute as to the deed is held to be efficacious in turning Mrs. Bradley into a trespasser as respects the mortgagor, who, not having in fact paid anything, is treated as having made payment by the mortgagee's bid, and being at the same time entitled to assert the failure of the purchase by reason of *laches* in taking out the deed.

And yet because a statute may take away the sword which a deed would give a mortgagee out of possession, it does not follow that it can lawfully operate on prior transactions so as to take away the shield afforded by possession. Rightful possession is a defense in ejectment, *Sands* v. *Wacaser*, 149 Ill. 530, 533, and cases cited, and Mrs. Bradley's possession could only be treated as wrongful as against the original mortgagor by the application of the subsequent law.

As we have said, when Mrs. Bradley took this mortgage there was no statutory limitation as to the time within which a master's deed must be taken out, and no loss of right by reason of failure to do so was prescribed. After she had filed her bill, and while she was in possession, the act of 1872 went into effect, and, it may be conceded, limited Mrs. Bradley's right to obtain a deed on foreclosure sale and so far affected any remedy through a deed she might have had. But, reading the act, as the view of the Supreme Court compels us to do, as taking away her right to maintain her possession, we are of opinion that it materially impairs the obligation of her contract, and deprives her of property without due process.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.

No. 306.

Lydia Bradley, Plaintiff in Error, *vs.* H. W. Lightcap. } In error to the Supreme Court of the State of Illinois.

[May 31, 1904.]

Mr. Chief Justice FULLER delivered the opinion of the Court:

After the decision reported 186 Ill. 510, Mrs. Bradley filed her bill in equity in the Circuit Court of Fulton County, Illinois, to quiet her title to the land in controversy in the action in ejectment and for appropriate relief. The bill was dismissed on demurrer and Mrs. Bradley carried the case to the Supreme Court of Illinois, which affirmed the decree below. *Bradley*

v. *Lightcap*, 202 Ill. 154, April 24, 1903. Three of the members of the court dissented. The opinion of the Supreme Court proceeded on the strength of the decisions in 186 Ill. 510, and 201 Ill. 511.

As we have reversed the judgment in the prior case, this case must take the same course.

Decree reversed and cause remanded for further proceedings not inconsistent with our opinion in No. 243.

No. 343.

Lydia Bradley, Appellant, *vs.* H. W. Lightcap. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[May 31, 1904.]

Mr. Chief Justice FULLER delivered the opinion of the Court:

This was a bill filed by Mrs. Bradley, to quiet her title to the premises in controversy in No. 243, and for appropriate relief, in the Circuit Court of the United States for the Northern District of Illinois, and was dismissed for want of jurisdiction, May 22, 1902.

The Circuit Court, Grosscup J., was of opinion that the statute of 1872 was not one of limitation in the same sense as a statute limiting the time within which foreclosure proceedings must be brought; that the failure to take out the deed within five years raised no presumption that the mortgage debt had been paid; and that the act was, in effect, simply a limitation on the time within which the foreclosure decree could be availed of, and did not operate to forfeit the mortgagee's title to the mortgagor if the deed were not taken out. But he thought that Mrs. Bradley's title by possession as mortgagee had not been held by the State court to have been cut off by the statute of 1872, as the record in that court stood, as reported in 186 Ill. 510, and that, therefore, the constitutional question did not arise. If, however, the Supreme Court had ruled that her title as mortgagee in possession had been so destroyed, the remedy was by writ of error from the Supreme Court of the United States. The decision in 201 Ill. 511, was rendered February 18, 1903. Taking into view the controversy as presented in the two other cases, and that the judgments in those cases are now directed to be reversed, and bearing in mind that a case does not necessarily arise under the Constitution or laws of the United States every time a writ of error would lie to the judgment of the State court, the decree of the Circuit Court will be

Affirmed.